IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.3387 of 2003
Date of Decision : December 01, 2006.

Suman Lata ..... Petitioner

Vs.

Shri Krishan Bhagwan Bhawan & another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.Ashish Aggarwal, Advocate
for the petitioner.

Mr.S.K.Jain, Advocate
for the respondents.

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P.S.Patwalia, J. :

The present revision petition has been filed challenging order dated 17.5.2003 passed by the learned Additional Civil Judge (Senior Division), Jind rejecting an application filed by the petitioner-defendant for producing rent agreement dated 8.3.1988 by way of secondary evidence.

A reading of the order would show that the application has been rejected on the ground that the trial court found from a prima facie reading of the photostat copy of the document on record that it was a document of leasing out of land and therefore was required to be compulsorily registered under the Indian Registration Act as also Transfer of Property Act. It was also found by the trial court that the document was not sufficiently stamped. Therefore taking the view that since the document was not registered and properly stamped it would not be admissible in evidence and therefore no

permission could be granted to lead secondary evidence of the same. It is hence that the application was declined. Learned counsel for the petitioner submits that the trial court has fallen in error in examining the evidentiary value of the document at this stage. He submits that the trial court should not have opined on the evidentiary value of the document at this stage. It would have been open to the respondents to raise objections in this regard at the stage when the case was being considered on merits. He however submits that even if it is assumed that the document is unregistered yet it can be looked into for co-lateral purposes including rate of rent etc. in terms of Section 49 of the Registration Act, 1908.

On the other hand, learned counsel for the respondents submits that since the trial court has found that the document was unregistered and was not per se admissible in evidence, permission to lead secondary evidence of the same document has been rightly declined.

After considering the submissions of the learned counsel for the parties I am of the opinion that order of the trial court is liable to be set aside. At this stage the petitioner is seeking permission to lead secondary evidence to prove the rent agreement dated 8.3.1988. Its evidentiary value would be seen at the time when the matter is being considered on merits. I am also of the opinion that even if it is ultimately found that the document is unregistered yet it can be looked into for co-lateral purposes in terms of the proviso to Section 49 of the Registration Act, 1908. On merits the petitioner has contended that the original rent agreement is not in his possession. It is his case that it is in possession of the plaintiff who is not producing the same. It is in that situation that he had filed the present application for leading secondary evidence to prove the same. I am of the opinion that the case of the applicant is covered by Section 65 of the Indian Evidence Act, 1872.

The present revision is accordingly allowed. The order dated

17.5.2003 passed by Additional Civil Judge (Senior Division), Jind is set aside. The applicant would be permitted to lead secondary evidence to prove agreement dated 8.3.1988 subject to observations made in this order.

December 01, 2006 (P.S.Patwalia)
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